

REMARKS

The Office Action mailed August 10, 2005, has been received and reviewed. Claims 1-6, 8, 9, 11-24, 26, 27, 29-40 are in the case. Claims 16-20 and 34-38 have been withdrawn from consideration. Claims 1-6, 8, 9, 11-15, 21-24, 26, 27, 29-33, 39, and 40 stand objected to for various informalities. Claims 1-6, 8, 9, 11-15, 21-24, 26, 27, 29-33, 39, and 40 stand rejected under 35 U.S.C. § 103(a).

By this amendment, claims 1, 2, 8, 21, 26, 32, 33, and 39 have been amended to correct various informalities. For the reasons set forth below, claims 1-6, 8, 9, 11-15, 21-24, 26, 27, 29-33, 39, and 40 are believed to be in condition for immediate allowance. Favorable reconsideration of the application in view of the following remarks, is therefore respectfully requested.

Objection to Claims

Claims 1-6, 8, 9, 11-15, 21-24, 26, 27, 29-33, 39, and 40 are objected to because of various informalities. Specifically, the Office Action asserts that "the proximal end" in claims 1, 39, and 40 should be changed to "the distal end," that "the external surface" in claims 2 and 3 lacks antecedence basis, and that "the extension" in claim 33 lacks antecedence basis.

By this paper, claims 1, 2, 32, 33, and 39 have been amended to correct the noted informalities. Claim 40 has not been amended as "the proximal end" recited therein appears to be proper.

**Rejection of Claims 1-3, 21, 24, 26, 27, 29-33, 39, and 40 Under 35 U.S.C. §103(a)**

Claims 1-3, 21, 24, 26, 27, 29-33, 39, and 40 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Chandler in view of Nattel.

To establish a *prima facie* case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. (See MPEP 2143.) The combination of Chandler and Nattel cannot meet this test. Specifically, neither Chandler nor Nattel teach a spacer having a fracture region providing controlled fracture in response to bending.

As acknowledged in the Office Action, Chandler provides no fracture region. Accordingly, for such teachings, the Office Action relies on Nattel. However, Nattel teaches a "bend line," not a fracture region. (See Nattel Abstract, column 1, line 67, column 2, lines 18-20, column 2, lines 24-25, column 2, line 40, column 3, lines 19-30, column 3, lines 36-46, column 3, line 51, column 3, lines 63-64, and Figures 2, 3, 6, and 7.)

In maintaining a rejection based on Chandler and Nattel, the Office Action is in effect asserting that "bending" and "fracture" are equivalent terms with identical meanings. This is not the case. Bending is a process beginning with a single, integral piece and ending with a single, integral piece. In contrast, fracture is a process beginning with a single piece and ending with at least two independent, unconnected pieces. Thus, Nattel's teaching of bending does not constitute a teaching of fracture, as claimed by Applicant.

**Rejection of Claims 4-6, 8-9, 11-15, and 22 Under 35 U.S.C. §103(a)**

Claims 4-6, 8-9, 11-15, and 22 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Chandler in view of Nattel and Doherty.

As presented hereinabove, the combination of Chandler and Nattel fails to teach or suggest the fracture region providing controlled fracture in response to bending, as required by Applicant. The addition of Doherty does not remedy this deficiency. Accordingly, the combination of Chandler, Nattel, and Doherty fails to teach and suggest all of Applicant's claim limitations and, therefore, cannot render Applicant's claims obvious. (See MPEP 2143.)

**Rejection of Claim 23 Under 35 U.S.C. §103(a)**

Claim 23 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Chandler in view of Doherty.

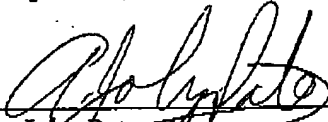
As acknowledged in the Office Action, Chandler provides no fracture region. The addition of Doherty does not remedy this deficiency, as Doherty does not teach or suggest a spacer, let alone a spacer having a fracture region. Accordingly, the combination of Chandler and Doherty fails to teach and suggest all of Applicant's claim limitations and, therefore, cannot render Applicant's claim 23 obvious. (See MPEP 2143.)

BEST AVAILABLE COPY

In the event that the examiner finds any remaining impediment to the prompt allowance of any of these claims, which could be clarified in a telephone conference, the examiner is respectfully urged to initiate the same with the undersigned.

DATED this 22<sup>nd</sup> day of December, 2005.

Respectfully submitted,

  
A. John Pate  
Reg. No. 36,234  
Attorney for Applicant

Date: December 22, 2005

PATE PIERCE & BAIRD  
550 Parkside Tower  
215 South State Street  
Salt Lake City, Utah 84111  
Telephone: (801) 530-0330  
Facsimile: (801) 530-5955

3250-2-1-3 PAT-FIL-ROAZ (Corrected).wpd

BEST AVAILABLE COPY